

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARK ROGOWSKI and NANCY ROGOWSKI,

Plaintiffs,

-against-

JEFFREY FEAGLES, MICHAEL SWEETON,
THOMAS SHUBACK, TSKS, LLC and THE TOWN
OF WARWICK,

Defendants.
-----X

FILED
U.S. DISTRICT COURT
2008 JAN 18 P 1:28
S.D. OF N.Y. W.B.
COMPLAINT

DEMAND TRIAL
BY JURY

08 CIV. 0517
JUDGE KARAS

Plaintiffs, MARK ROGOWSKI and NANCY ROGOWSKI, by their attorneys,

ROBERT N. ISSEKS and ALEX SMITH, allege as follows:

The Parties

1. At all times hereinafter mentioned Plaintiffs were and remain residents of the County of Orange, State of New York, owning property located at 260 Mt. Eve Road in the Town of Warwick, and designated as Section 6, Block 4, Lot 23.1 on the Tax Map of the Town of Warwick.

2. At all times hereinafter mentioned, Defendant Jeffrey Feagles ("Feagles") was and is the Commissioner of the Department of Public Works of the Town of Warwick, County of Orange, State of New York. Feagles is being sued in his individual and official capacities.

3. At all times hereinafter mentioned, Defendant Michael Sweeton ("Sweeton") was and is the duly elected Supervisor of the Town of Warwick, County of Orange, State

of New York. Sweeton is being sued in his individual and official capacities.

4. At all times hereinafter mentioned, Defendant Thomas Shuback (“Shuback”) was and is a resident of the Town of Warwick, residing at 229 Mt. Eve Road, property comprising 2 parcels designated as Section 6, Block 2, Lot 70.1 and Section 6, Block 2, Lot 57.22 on the Tax Map of the Town of Warwick. Shuback is the son of Mickey Shuback, a duly elected member of the Town Board of the Town of Warwick.

5. At all times hereinafter mentioned, Defendant TSKS, LLC (“TSKS”) is a limited liability corporation formed and organized pursuant to the laws of the State of New York in May, 2006. TSKS is the record owner of the property at 229 Mt. Eve Road, comprising 2 parcels designated as Section 6, Block 2, Lot 70.1 and Section 6, Block 2, Lot 57.22 on the Tax Map of the Town of Warwick. Upon information and belief, Defendant Shuback has a controlling interest in Defendant TSKS.

6. At all times hereinafter mentioned, the Town of Warwick, New York, was, and continues to be, a municipality located within the County of Orange and duly organized and existing under the laws of the State of New York. Part of the operations of said municipality is the management and operation of a Department of Public Works.

Nature of Action and Jurisdiction

7. This is a civil action seeking compensatory and punitive damages against the Defendants Feagles, Sweeton, and Shuback, and compensatory damages against Defendant Town of Warwick, for committing acts under color of law which deprived Plaintiffs of rights secured under the Constitution and laws of the United States and

particularly under the provisions of the Fifth and Fourteenth Amendments of the Constitution of the United States, and under federal law, particularly Title 42 of the United States Code, Section 1983.

8. Each and all of the acts of the Defendants Feagles and Sweeton were done by them in their individual capacities under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York and under their authority as Public Works Commissioner and Supervisor, respectively, of the Town of Warwick, New York.

9. Each and all of the acts of Defendants Shuback and TSKS were done by them acting in concert and conspiracy with Defendants Feagles and Sweeton.

10. Jurisdiction is conferred on this Court by 28 USC 1331 and 1343.

11. This Court's supplemental jurisdiction is also invoked to assert Plaintiffs' New York State common law claim of conversion.

Plaintiffs' Statement of Claims

12. On April 16, 2007, a severe storm struck near Plaintiffs' property in the Town of Warwick. The storm's heavy rains caused a massive landslide of dirt from Plaintiffs' property to travel downhill onto Mt. Eve Road.

13. After the storm abated, and still on April 16, 2007, Defendants Feagles, Sweeton and Shuback arrived at Plaintiffs' residence. The Defendants refused Plaintiff Mark Rogowski's request for the return of approximately 1000 cubic yards of Plaintiffs' dirt then lying on or about Mt. Eve Road.

14. Instead of returning Plaintiffs' dirt to Plaintiffs' property, Defendants, acting individually and in concert, caused the dirt to be transported to the aforesaid property of TSKS and Shuback, son of Town Board member Mickey Shuback.

15. Defendants, acting individually and in concert, determined to deprive Plaintiffs of their property and deliver said property to Shuback and TSKS who took possession and ownership of same.

16. The transportation by Defendants of Plaintiffs' dirt to TSKS' and Shuback's property was without the consent of the Plaintiffs and was done despite the objections of Plaintiff Mark Rogowski.

17. By virtue of the conduct of Defendants, Plaintiffs have been and will be forced to incur substantial expenses in replacing the dirt converted by Defendants.

18. By virtue of their positions, Defendants Feagles and Sweeton are policymakers of the Town of Warwick, and acted in such capacity in all of the aforesaid actions.

19. Defendant Sweeton subsequently admitted that the transportation of Plaintiffs' dirt to TSKS' and Shuback's property was done pursuant to Town of Warwick policy.

20. The acts, conduct and behavior of Feagles, Sweeton and Shuback were performed knowingly, intentionally, maliciously, with callous and depraved indifference to the rights of Plaintiffs. By reason of the foregoing, Plaintiffs are entitled to awards of both compensatory and punitive damages.

21. By virtue of Feagles', Sweeton's, and Shuback's conduct as described herein,

Plaintiffs were denied the following rights, privileges and immunities secured to them by the Constitution of the United States:

(a) the right to due process of law secured by the Fourteenth Amendment;

(b) the right to equal protection of the law guaranteed by the Fourteenth Amendment.

22. The acts, conduct and behavior of the Defendants also constituted the tort of conversion under the common law of the State of New York.

23. On or about the 13th day of July, 2007, and within ninety days after the claim upon which this action is based, the Plaintiffs served a Notice of Claim upon the Defendant Town of Warwick, in full compliance with the provisions of the General Municipal Law of the State of New York.

24. The one year and ninety day requirement with respect to the service of pleadings has been complied with.

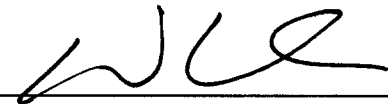
25. By reason of the foregoing, and because Feagles, Sweeton and Shuback acted with wanton and unconscionable disregard for Plaintiffs' rights, privileges, welfare and well-being, Plaintiffs are entitled to awards of punitive damages against Feagles, Sweeton and Shuback.

26. By virtue of the foregoing, and because Defendants Feagles and Sweeton are policymakers of the Town of Warwick, and acted in such capacity in all of the aforesaid actions, Plaintiffs are entitled to awards of compensatory damages against the Town of Warwick.

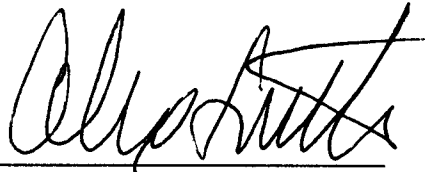
WHEREFORE, Plaintiffs asks this Court to:

- A. Issue an order adjudging and declaring that the Defendants' conduct, acts and/or omissions violated Plaintiffs' rights under the Fourteenth Amendment of the United States Constitution;
- B. Award Plaintiffs compensatory damages against the Defendants in amounts to be determined by the Court;
- C. Award Plaintiffs punitive damages against the Defendants Feagles, Sweeton and Shuback in amounts to be determined by the Court;
- D. Award Plaintiffs the costs and disbursements of this action;
- E. Award Plaintiffs reasonable attorney fees; and
- F. Grant Plaintiffs such other and further relief as to this Court may seem just and proper.

Dated: January 16, 2008



ROBERT N. ISSEKS, ESQ. (RI 0241)



ALEX SMITH, ESQ. (AS 5052)

Attorneys for Plaintiffs
6 North Street
Middletown, New York 10940
(845) 344-4322

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK ROGOWSKI and NANCY ROGOWSKI,

Plaintiffs,

-against-

VERIFICATION

JEFFREY FEAGLES, MICHAEL SWEETON,
THOMAS SHUBACK, TSKS, LLC and THE TOWN
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Defendants.

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State of New York, County of Orange ss.:

MARK ROGOWSKI, being duly sworn, deposes and says:

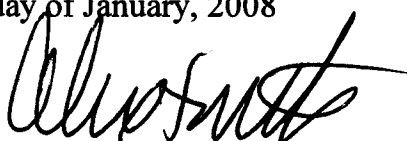
That he is a Plaintiff herein; that he has read the foregoing Complaint and
knows the content thereof; and that the same is true upon his personal knowledge
or upon information and belief.



MARK ROGOWSKI

Sworn to before me this

16th day of January, 2008



NOTARY PUBLIC

ALEX SMITH
Notary Public, State of New York
No. 02SM4831161
Qualified in Orange County
Commission Expires Feb. 28, 2011

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State of New York, County of Orange ss.:

NANCY ROGOWSKI, being duly sworn, deposes and says:

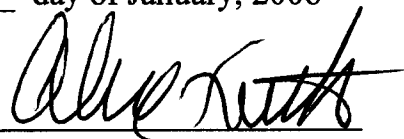
That she is a Plaintiff herein; that she has read the foregoing Complaint and
knows the content thereof; and that the same is true upon her personal knowledge
or upon information and belief.



NANCY ROGOWSKI

Sworn to before me this

16th day of January, 2008



NOTARY PUBLIC

ALEX SMITH
Notary Public, State of New York
No. 02SM4831161
Qualified in Orange County
Commission Expires Feb. 28, 2012